

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of the Vermont Department of Public Service for an investigation into the service quality provided by Telephone Operating Company of Vermont, Inc., d/b/a Consolidated Communications, Inc.) Case No. 18-3231-PET

**SUPPLEMENTAL MOTION FOR CONFIDENTIAL TREATMENT
OF PREFILED EVIDENCE OF THE DEPARTMENT OF PUBLIC SERVICE**

Consolidated Communications of Vermont Company, LLC (formerly Telephone Operating Company of Vermont LLC) d/b/a Consolidated Communications (“Consolidated” or the “Company”) hereby submits this Supplemental Motion¹ to the Public Utility Commission (“Commission”) further requesting confidential treatment of select portions of the prefiled direct testimony and exhibits of the Department of Public Service (the “Department”). In support of this Supplemental Motion, Consolidated relies on the following incorporated Memorandum of Law and attached Averment No. 1.

MEMORANDUM OF LAW

I. Introduction

On April 26, 2019, the Department filed redacted and confidential copies of prefiled direct testimony and confidential and non-confidential exhibits in the above captioned matter. Consolidated sought confidential treatment of the nonpublic, confidential information contained in the Department’s prefiled direct testimony and exhibits. Consolidated asserted in its April 25

¹ Consolidated has labeled this as a Supplemental Motion based on its reading of the Commission’s June 6 Order (denying and granting the confidential treatment request), which appears to suggest that further information could be filed by Consolidated, stating, “[a]bsent a more substantial and persuasive argument from Consolidated...” the Commission deems specific information not confidential. Through this Supplemental Motion, Consolidated seeks to provide further substantial and persuasive argument to support confidential treatment of certain portions of the Department’s prefiled testimony for which confidential treatment was initially denied. In the alternative, if the Commission disagrees with Consolidated’s reading of the June 6 Order as inviting supplemental information, Consolidated requests that the Commission treat this Motion as a motion for reconsideration of portions of the June 6 Order denying Consolidated’s request for confidential treatment as specifically identified below.

Motion that the confidential information is proprietary and competitively sensitive information that consists of data pulled from confidential Consolidated discovery attachments, and other confidential information provided to the Department by Consolidated during the course of discovery, which was subject to the Commission approved January 30, 2019 Protective Agreement. On June 6, the Commission issued an Order denying in part and granting in part Consolidated's April 25 Motion for Confidential Treatment. In its Order, the Commission stated that, "[a]bsent a more substantial and persuasive argument from Consolidated..." the Commission deems specific information not confidential. Through this Supplemental Motion, Consolidated seeks to provide further substantial and persuasive argument to support confidential treatment of certain portions of the Department's prefiled testimony for which the Commission rejected Consolidated's initial request for confidential treatment.²

II. General Standard for Confidential Treatment

In determining whether to grant confidential treatment, the Commission considers the following:

- (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information that should be protected?
- (2) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?
- (3) Has the party seeking protection shown "good cause" for invoking the Commission's protection?³

² Consolidated has attached a revised Averment No. 1, specifically, Averment No. 1 Fourth Amendment, in clean and marked form with this Motion. Consolidated will file a Proposed Order with the Commission following submission of comments by the Department on this Motion.

³ *Joint Petition of Consolidated Communications Holding, Inc., Consolidated Communications, Inc., Falcon Merger Sub, Inc., FairPoint Communications, Inc., Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications, FairPoint Vermont, Inc., d/b/a FairPoint Communications, UI Long Distance, Inc., and Enhanced Communications of Northern New England, Inc., for approval of a transfer of control by merger, pursuant to 30 V.S.A. §§ 107, 108, 109, 231(a), and 311, Case No. 8881 (Vt. Pub. Serv. Bd. May 4, 2017); Petition of Green Mountain Power Corporation requesting a certificate of public good, pursuant to 30 V.S.A. Section 248, for the purchase of electricity from NextEra Energy Seabrook, LLC from 2012 through 2034, Docket No. 7742 (Vt. Pub. Serv. Bd. Sept. 8, 2011); Investigation into Treatment of Allegedly Confidential Information Submitted by Nine Vermont Independent Telephone Companies, Docket No. 6904 (Vt. Pub. Serv. Bd. Nov. 14, 2003); Joint Petition of*

III. Description of the Information Sought to be Protected and Need for its Confidential Protection

Consolidated seeks confidential treatment of nonpublic, confidential, proprietary, and competitively sensitive information contained in portions of the prefiled direct testimony of Department witnesses Fred Goldstein and Barlow Keener, and Carol Flint, as well as Exhibit DPS-CF-2. For the Commission’s convenience, these are the specific portions of prefiled testimony for which Consolidated seeks confidential treatment:⁴

Flint: P 10, line 2	Goldstein/Keener: P 5, lines 3, 10
Flint: P 11, lines 1-16 (Table)	Goldstein/Keener: P 9, line 17
Flint: P 12, line 4	Goldstein/Keener: P 10, lines 5, 7, 9, 11, 13, 14, 16, 18
Flint: P 14, lines 18-19	Goldstein/Keener: P 11, lines 1-3 (chart), 8
Flint: P 15, line 1 (Table)	Goldstein/Keener: P 12, lines 11, 14, 15
Flint: Exhibit DPS-CF-2	Goldstein/Keener: P 13, lines 1, 4, 5, 8, 10, 12, 13, 16, 17, 19, 20
	Goldstein/Keener: P 14, lines 1, 2, 4, 6, 7, 12-14 (chart)
	Goldstein/Keener: P 15, lines 11-13 (chart)
	Goldstein/Keener: P 16, line 8
	Goldstein/Keener: P 17, lines 9, 12, 14
	Goldstein/Keener: P 21, lines 5-7 (chart)
	Goldstein/Keener: P 22, lines 3-5 (chart), 11, 13
	Goldstein/Keener: P 23, lines 1, 7, 9, 11, 19-20, 22
	Goldstein/Keener: P 24, lines 2, 9, 11, 13-14, 16-17
	Goldstein/Keener: P 25, line 9
	Goldstein/Keener: P 27, lines 2, 4, 8, 10, 11, 13, 16
	Goldstein/Keener: P 28, line 1
	Goldstein/Keener: P 29, lines 4, 5, 7, 9, 11, 13
	Goldstein/Keener: P 30, line 20
	Goldstein/Keener: P 48, lines 5-7 (chart)

VELCO and VEC for a certificate of public good, pursuant to 30 V.S.A. Section 248, authorizing the construction of: (1) a new VELCO 115/46 kV Substation in Jay, Vermont, to be located adjacent to VEC’s existing Jay Peak Switching Station; (2) modification of transmission lines; and (3) relocation of a residence drive and improvement of access road, Docket No. 7708 (Vt. Pub. Serv. Bd. June 27, 2011).

⁴ Consolidated has not requested confidential treatment of a number of the specific items the Commission previously deemed as not warranting confidential treatment.

A. Information Based On Weekly Reports To The Department

Consolidated seeks confidential treatment of the following portions of Carol Flint's prefiled testimony: P 10, line 2; P 11, lines 1-16 (Table); P 12, line 4; and Exhibit DPS-CF-2. The information in these sections of the testimony is not information that is provided in Consolidated's quarterly reports. All of this information contains unaudited, raw data that Consolidated has been providing to the Department on a weekly basis at the Department's request while this investigation has been ongoing in order to provide the Department with a "real time" picture of weekly load. This raw data is then filtered for the quarterly reports to ensure the quarterly reports contain information that is 1) required to be reported, and 2) provides monthly information. Accordingly, the information from the informal weekly reports submitted to the Department will not match up to the quarterly reports.

This information in Ms. Flint's testimony should be treated confidentially because it is not the same as the public information that Consolidated makes available in its quarterly reports. Rather, this information is far more detailed than a general summary or description of service quality as measured by the metrics in the quarterly reports. As well, the raw data on the number of troubles and installations in the queue is competitively sensitive information. Specifically, Consolidated is concerned that competitors would attempt to use this information to Consolidated's detriment by informing consumers, for example, that they would have long wait times with Consolidated because in any given week Consolidated has historically had specific amounts of repairs and installations as detailed in this information. Consolidated's competitors are not required to provide this type of weekly installation and trouble ticket data to the Vermont

Department. Making only Consolidated's weekly raw data public without requiring its competitors to do the same could create a significant competitive disadvantage for the Company.

B. Trouble Ticket Numbers And Time Cleared

Consolidated seeks confidential treatment of the following portions of Goldstein/Keener prefiled testimony: P 21, lines 5-7 (chart); P 22, lines 11, 13; P 23, lines 1, 7, 9, 11, 19-20, 22; P 24, lines 2, 9, 11, 13-14, 16-17; P 25, line 9; P 27, lines 2, 4, 8, 10, 11, 13, 16; P 28, line 1; and P 48, lines 5-7 (chart). The information in these sections of the testimony is not information that is provided in Consolidated's quarterly reports or otherwise made publicly available. This information specifically details Consolidated trouble ticket numbers and the amount of time that was taken to clear trouble tickets during a particular time period.

This information in the Goldstein/Keener testimony should be treated confidentially because disclosing the number of troubles and installations in the queue is competitively sensitive information, and further detailing the time it took for certain repairs and installations is highly sensitive. Public disclosure of the information would cause cognizable harm to Consolidated's business, and place Consolidated at an unfair disadvantage in various bargaining positions, allowing competitors and other third parties to compete or negotiate more directly and effectively with Consolidated. Disclosure substantially hampers Consolidated's position in this increasingly aggressive competitive market. Specifically, Consolidated is concerned that competitors would attempt to use this information to Consolidated's detriment by informing consumers, for example, that they would have long wait times with Consolidated because in any given week Consolidated has historically had specific amounts of repairs and installations as detailed in this information. This concern is further heightened by the fact that this trouble ticket information may be storm related or for repairs in the most remote, rural and difficult areas to

serve, but without that context, could be used by competitors to target marketing efforts throughout the State in a way that would be misrepresentative, and therefore harmful to Consolidated.

C. Repairs Per Technician

Consolidated seeks confidential treatment of the following portions of Goldstein/Keener prefiled testimony: P 22, lines 3-5 (chart). The information in these sections of the testimony is not information that is provided in Consolidated's quarterly reports or otherwise made publicly available. This information specifically details Consolidated technicians' average number of trouble ticket repairs per week.

Consolidated seeks confidential treatment of this competitively sensitive information. Disclosure of information relating to the effect of staffing levels on Consolidated's trouble ticket closure rates would permit Consolidated's competitors to make strategic assessments regarding strengths and weaknesses in Consolidated's workforce. Information allowing competitors to target weaknesses in Consolidated's network capabilities and workforce would provide those competitors with an unfair competitive advantage. As well, to Consolidated's disadvantage, competitors could use this information in their marketing efforts to highlight any staffing advantages over Consolidated's staffing percentages.

D. Repeat Troubles

Consolidated seeks confidential treatment of the following portions of Goldstein/Keener prefiled testimony: P 12, lines 11, 14, 15; P 13, lines 1, 4, 5, 8, 10, 12, 13, 16, 17, 19, 20; P 14, lines 1, 2, 4, 6, 7, 12-14 (chart); P 15, lines 11-13 (chart); and P 16, line 8. The information in these sections of the testimony is not information that is provided in Consolidated's quarterly reports or otherwise made publicly available. This information specifically includes what

Goldstein/Keener have labelled and calculated as “repeat troubles,” but without providing industry standards or background supporting their representation of what “repeat troubles” means.

Consolidated seeks confidential treatment of this information because it is competitively sensitive and its disclosure would likely cause Consolidated competitive harm. Specifically, Consolidated is concerned that if disclosed this information would disadvantage Consolidated in several ways. First, competitors could use it to Consolidated’s disadvantage by marketing to consumers in a way to suggest service with Consolidated will involve repeated service problems. Second, Consolidated disagrees with the way in which Goldstein/Keener has calculated “repeat troubles,” and believes that the Goldstein/Keener numbers inflate the repeat troubles. Disclosure of this information will further harm consumers by confusing or misleading them regarding repeat troubles.

E. Total Trouble Tickets Reviewed By Goldstein/Keener

Consolidated seeks confidential treatment of the following portions of Goldstein/Keener prefiled testimony: P 5, lines 3, 10; P 9, line 17; and P 17, lines 9, 12, 14. The information in these sections of the testimony is not information that is provided in Consolidated’s quarterly reports or otherwise made publicly available. This information specifically identifies total numbers of trouble tickets that Goldstein and Keener reviewed during this proceeding.

Consolidated seeks confidential treatment of this information because it is competitively sensitive and its disclosure would likely cause Consolidated competitive harm. Specifically, Consolidated is concerned that if disclosed this information would disadvantage Consolidated, or at the least, confuse consumers to the detriment of Consolidated. The total numbers of trouble tickets reviewed over the Department’s study period are sizeable numbers, but the total time

period included to calculate totals and how that compares historically or across the industry is not included. Without the relevant context, this information could be taken out of context, and competitors or consumers could view such large total numbers in a way that causes harm to Consolidated.

F. Repair/Installation Response Times

Consolidated seeks confidential treatment of the following portions of 1) Carol Flint's prefiled testimony: P 14, lines 18-19; P 15, line 1 (Table); and 2) these portions of Goldstein/Keener prefiled testimony: P 10, lines 5, 7, 9, 11, 13, 14, 16, 18; P 11, lines 1-3 (chart), 8; P 29, lines 4, 5, 7, 9, 11, 13; and P 30, line 20. The information in these sections of the testimony is not information that is contained in Consolidated's quarterly reports or otherwise made publicly available. This information specifically details Consolidated repair and installation response times.

Consolidated requests confidential treatment of this information because it is competitively sensitive and its disclosure would likely cause Consolidated competitive harm. It should be noted that this is not information that competitors are required to report to the Department or Commission. Competitors could use this information to Consolidated's disadvantage by informing consumers that they should choose the competitor over Consolidated because Consolidated has certain historical wait times for repairs and installations based on the disclosed information, even though these longer repair times may have been storm related or repairs in the most remote, rural and difficult areas to serve.

IV. Good Cause Exists for Invoking the Commission's Protection

For the above-stated reasons and those set forth in further detail in Consolidated's attached Averment No. 1, there is good cause for the Commission to issue a Protective Order according confidential treatment to the confidential information described above.

The Commission has previously granted confidential treatment of information in similar circumstances.⁵

Consolidated has and will continue to review the confidential information, and to work with the Department in this regard, to determine whether any of it can be reclassified and will advise the Commission and the parties of the results of its review. To the extent that any party disputes the designation of the redacted passages and exhibits as confidential and Consolidated and the party are unable to resolve the dispute, Consolidated seeks an opportunity to present additional information for the Commission's consideration specific to the disputed redacted passages and exhibit in connection with this Motion.

V. Conclusion

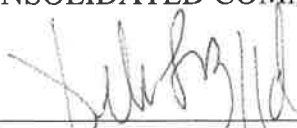
For the above-stated reasons, Consolidated respectfully requests that the Commission issue a Protective Order to accord further confidential treatment to certain information in the Department's prefiled testimony and exhibits as detailed above.

⁵ See *In re Renewal of the Certificate of Public Good of Comcast of Connecticut/ Georgia/ Massachusetts/ New Hampshire/ New York/ North Carolina/ Virginia/ Vermont, LLC, d/b/a Comcast*, Docket No. 8301 (Vt. Pub. Serv. Bd. Aug. 4, 2016); *Joint Petition of Consolidated Communications Holding, Inc., et al.*, Case No. 8881 (Vt. Pub. Serv. Bd. May 4, 2017).

Dated: June 26, 2019

RESPECTFULLY SUBMITTED,
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